

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

Michael Foley,
Plaintiff

V.

Kenneth Graham, et al.,
Defendants

Case No.: 2:16-cv-01871-JAD-VCF

Order Granting Motion to Extend Time
[ECF No. 51]

After missing his deadline to oppose defendants’ motion to dismiss,¹ pro se plaintiff Michael Foley now moves to extend that deadline so he can file an opposition.² Defendants oppose that request and ask the court to grant their motion to dismiss as uncontested.³

When a party moves to extend a deadline after that deadline has already passed, as Foley does here, the movant must “demonstrate[] that the failure to file the motion [to extend the deadline] before the deadline expired was the result of excusable neglect.”⁴ “Excusable neglect ‘encompasses situations in which the failure to comply with a filing deadline is attributable to negligence,’ and includes ‘omissions caused by carelessness.’”⁵ “The determination of whether neglect is excusable ‘is at bottom an equitable one, taking account of all relevant circumstances surrounding the party’s omission.’”⁶ “To determine when neglect is excusable, we conduct the equitable analysis specified in *Pioneer [Investment Services Company v. Brunswick Associates*

¹ ECF No. 47.

² ECF No. 51.

³ ECF No. 52.

⁴ L.R. IA 6-1(a).

⁵ *Lemoge v. United States*, 587 F.3d 1188, 1192 (9th Cir. 2009) (quoting *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 394–95 (1993)),

⁶ *Lemoge*, 587 F.3d at 1192 (quoting *Pioneer*, 507 U.S. at 395).

1 *Ltd.*] by examining ‘at least four factors: (1) the danger of prejudice to the opposing party; (2) the
2 length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and
3 (4) whether the movant acted in good faith.’”⁷

4 Foley states that his failure to timely respond was the result of excusable neglect because
5 he was in the middle of moving out of his home and was only “recently . . . able to use
6 his computer since having completed his move.” Weighing the *Pioneer* factors, I find that Foley
7 has demonstrated excusable neglect for failing to move to extend the deadline before it expired.
8 So I grant his motion and extend his deadline to respond to the defendants’ motion to dismiss to
9 April 3, 2020.

10 IT IS THEREFORE ORDERED that Foley’s motion to extend the deadline to respond to
11 the defendants’ motion to dismiss [ECF No. 51] is **GRANTED. Foley must file his response**
12 **to that motion [ECF No. 47] by April 3, 2020, or the motion will be granted as unopposed.**

13 Dated: March 13, 2020

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16 U.S. District Judge Jennifer A. Dorsey
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⁷ *Id.* (quoting *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223–24 (9th Cir. 2000)).